



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

RA/DRH
CC CIG-L
WSTM
CNCL
RB
AK
IL

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT

Honorable Thad Cochran
United States Senate
Senate Office Building
Washington, D.C. 20510

Site:	Martha Rose Chem.
ID #:	MoD 980633069
Break:	11.2
Other:	NID

Dear Senator Cochran:

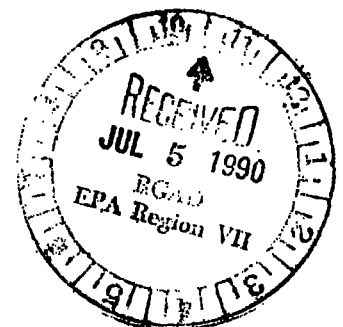
Greer Tidwell, Regional Administrator, Region IV, forwarded to us for response your May 29, 1990 letter written on behalf of four Mississippi municipalities concerned with their potential liability for response costs at the Rose Chemical Superfund Site in Holden, Missouri.

The environmental problems attributable to the Rose Chemical Site became evident following the abandonment by Martha Rose Chemicals, Inc. of its polychlorinated biphenyls (PCB) processing and treatment facility in Holden, Missouri. This closure left behind over thirteen (13) million pounds of PCB-contaminated equipment, oil, soil, and other debris. Soon thereafter, the Environmental Protection Agency began negotiations with certain entities, commonly referred to as the Rose Chemicals Steering Committee (RCSC), who had arranged for treatment or disposal of significant amounts of PCBs and PCB-contaminated items at the Rose Chemical Site. The four Mississippi municipalities are not part of the RCSC. In September 1987, EPA and the sixteen (16) members of the RCSC entered into an Administrative Order on Consent pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) whereby the RCSC agreed to remove and properly dispose of a substantial portion of all PCBs and PCB-contaminated items at the Site and to conduct a remedial investigation and feasibility study (RI/FS).

As of this date, the RCSC has completed the removal, and is working on the RI/FS to determine the nature and extent of contamination and to evaluate alternatives for appropriate final remedial action. The Region anticipates that the RI/FS will be finalized in the near future.



40027317
SUPERFUND RECORDS



To fund the cleanup, the RCSC has offered all other potentially responsible parties (approximately 650-750 parties), including the four Mississippi municipalities in question, an opportunity to participate in the site cleanup effort. The four Mississippi municipalities declined to participate. The EPA's position throughout the cleanup process has been to encourage all non-committee members to participate in the Site cleanup through the efforts of the RCSC. While it is unfortunate that the assessment for the site cleanup poses a heavy financial burden on any PRP, EPA believes it is in the best interest of all PRPs to participate through the RCSC. Our experience is that extensive participation in steering committees minimizes transaction costs for both the government and PRPs.

Section 107(a) of CERCLA sets out those who are liable for response costs. The provision that applies to the Mississippi municipalities is "any person who by contract, agreement, or otherwise arranged for disposal or treatment ...of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances...." The Mississippi municipalities sent PCB materials (hazardous substances) to the Rose Chemical Site for treatment or disposal. Hence, they are considered responsible parties liable for any response costs incurred at the Site.

To encourage the participation of all potentially responsible parties (PRPs) in the cleanup process, the Agency agreed in the Administrative Consent Order to pursue recovery for a significant portion of its response costs from those PRPs who refused or otherwise failed to participate, if the RCSC did not achieve a certain level of participation in the Buy-Out Agreement. Because the RCSC achieved the requisite level of participation, EPA is not required to seek recovery of its response costs from non-settlers. As a result, the RCSC must seek contribution from the non-settlers in order to recover its remaining costs.

We are sensitive to the Mississippi cities' concern with the financial burden. However, EPA is responsible for uniformly enforcing the provision of the law which mandates that those who send hazardous materials to a treatment/disposal facility are responsible for site cleanup, and the law makes no exception for municipalities.

The April 12, 1990 letter from Mr. James O. Neet, Jr. to Morris Kay, Regional Administrator, Region VII, and Martha Steincamp, Regional Counsel (enclosed with your letter of May 29, 1990) presented a settlement offer on behalf the four Mississippi municipalities. It is the Region's position that until the RI/FS is finalized, it is inappropriate to consider any settlement offers. The finalized RI/FS will provide some indication of what the remedy may be and, therefore, should assist the agency in more accurately evaluating any offers. Once the RI/FS is finalized, the Agency will evaluate all settlement offers.

Thank you for your interest and concern. If you have any questions or need further information about this situation, please contact me or David Van Slyke (382-3050) of my staff.

Sincerely yours,

James M. Strock

cc: Greer C. Tidwell, Regional Administrator, Region IV
Morris Kay, Regional Administrator, Region VI
Don Clay, Assistant Administrator
Solid Waste & Emergency Response
CLA/Patrick Quinn

PREPARED BY: SMOZLEY:OE:382-3070/AL902768\F:BJACKSON\ROSE.4

~~RE~~
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CONTROL SLIP FOR OFFICE OF CONGRESSIONAL CORRESPONDENCE
RM. 227-G, WSMW
382-7640

CONTROL NO: AL902768

DUE DATE: 6/29/90

FROM: HONORABLE THAD COCHRAN R/MS
UNITED STATES SENATE
WASHINGTON, D.C. 20510

INCOMING: 5/29/90

RECEIVED: 6/15/90

ASSIGNED: 6/15/90

CONSTITUENT: MR. HENRY W. ESPY, MAYOR
CITY OF CLARKSDALE
CLARKSDALE MS

CLOSED: _____

SUBJECT: DISPOSAL SITE/ROSE CHEMICAL/HOLDEN, MO.

ASSIGNED: 1 OFFICE OF ENFORCEMENT

3 _____

2 _____

4 _____

SIGNATURE: ASSISTANT ADMINISTRATOR

SPECIAL INSTRUCTIONS:

MUST BE RETURNED TO RM. 227-G WSMW, FOR REVIEW AND DISPATCHING.
INCLUDE "HARD" COPY OF REPLY FOR CONGRESSIONAL FILES (AL).

NOTE:

COURTESY COPIES:

REGION 04

✓ REGION 07

SOLID WASTE & EMERG RESP

CLA/MR. GUINN

THAD COCHRAN
MISSISSIPPI

5
United States Senate

WASHINGTON, DC 20510

May 29, 1990

COMMITTEE ON
AGRICULTURE, NUTRITION,
AND FORESTRY

COMMITTEE ON
APPROPRIATIONS

COMMITTEE ON
LABOR AND
HUMAN RESOURCES

SELECT COMMITTEE ON
INDIAN AFFAIRS

Mr. Greer C. Tidwell
Environmental Protection Agency
Regional Administrator
345 Courtland Street, N.E.
Atlanta, Georgia 30365

OE
R4-7
SW
SW
AA

Dear Mr. Tidwell:

One of my constituents, Honorable Henry Espy Mayor of Clarksdale, Mississippi, has contacted me regarding the difficulty he is experiencing with your agency. I am taking the liberty of sending you a copy of his letter to me.

I would appreciate it if you could check into this matter and notify me of your findings.

Your assistance in responding to this matter is greatly appreciated.

Sincerely,



THAD COCHRAN
United States Senator

TC/nf
Enclosure

RECEIVED
6/15/90



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

JUN 8 1990

Honorable Thad Cochran
United States Senate
Washington, D.C. 20510

Dear Senator Cochran:

This is to respond to your recent communication from Mayor Henry Espy of Clarksdale, Mississippi requesting EPA to settle a claim for clean-up costs of a hazardous wastes site operated by Rose Chemical at Holden, Missouri.

Since this matter is being addressed by our Headquarters office in Washington, D.C., I am taking the liberty of forwarding your letter to that office for response.

Please feel free to contact me further if I can be of assistance.

Sincerely yours,

A handwritten signature in cursive script, reading "Greer C. Tidwell", is positioned above the typed name.

Greer C. Tidwell
Regional Administrator

City of Clarksdale

HENRY ESPY
MAYOR

POST OFFICE BOX 940
CLARKSDALE, MISSISSIPPI 38614

April 14, 1990

The Honorable Thad Cochran
United States Senator
Senate Office Building
Washington, D. C. 20510

Dear Senator Cochran:

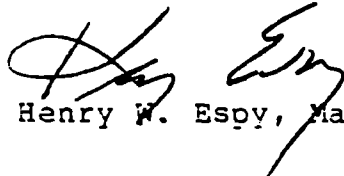
On behalf of myself and the Mayors of Canton, Kosciusko, and Yazoo City, we earnestly solicit your help in urging EPA to exercise the authority granted EPA under Federal law to settle directly with the cities a claim for clean-up costs of a hazardous waste site assessed against these cities.

These four Mississippi cities are willing and anxious to pay the correct amounts owed by them and do so in a way that will avoid costly litigation. Unless EPA settles this claim in this manner, it appears that these cities will be forced to participate in unwanted litigation that will ultimately cost them substantially more money than the amount of the claim. The attached documents explain the problem and our proposed solution in some detail.

We would sincerely appreciate your assistance and, if you need additional information, we will be happy to provide it.

Sincerely,

CITY OF CLARKSDALE, MISSISSIPPI


Henry W. Espy, Mayor

MISSISSIPPI CITIES REQUEST EPA TO SETTLE CLAIM

From October 1983 to August 1985, the Mississippi cities of Canton, Clarksdale, Kosciusko, and Yazoo City shipped hazardous waste from their electric utility operations to a disposal site operated by Rose Chemical at Holden, Missouri.

The site was fully licensed and approved by the United States Environmental Protection Administration.

EPA inspectors found severe violations by Rose at the site from November 1983 to March 1986.

Rose settled these violations without notice to the Mississippi cities or any other of the site users.

In March 1986, Rose Chemical abandoned the site, leaving undisposed of approximately 14 million lbs. of the 23.2 million lbs. shipped there. Rose Chemical apparently went bankrupt and some of its officers were later indicted.

After the site was abandoned, EPA notified some of the larger users that all of the users described as "potentially responsible parties", had to clean up the site at the users' expense. Without notifying the Mississippi cities, the larger users formed a steering committee consisting only of the large users and entered into an administrative consent order with EPA agreeing to clean up the site. These large users include: Commonwealth Edison, General Motors Corporation, Illinois Power Company, Kansas City Power & Light, and ten (10) other large electric utilities which had shipped large quantities of hazardous materials to the site.

Of the total of 23.2 million lbs. of hazardous materials

shipped to the site, the Mississippi cities shipped only 32,538 lbs., or .0014% of the total.

The Mississippi cities had no notice of the consent order that obligated the site users to clean up the site and the Mississippi cities were not a party to it.

The Rose Steering Committee asserted complete control of the clean-up and demanded that the Mississippi cities pay to it in advance the cities' prorata shares of the total clean-up costs--i.e., turn public funds over to these private parties. The Rose Steering Committee has now made a demand on the Mississippi cities for payment of One Hundred Thirteen Thousand Eight Hundred Eighty-Three Dollars (\$113,883.00) for a share of the clean-up costs that the cities calculate should eventually be no more than Forty-One Thousand Nine Hundred Seventy-Four and 02/100 Dollars (\$41,974.02).

Under Mississippi law, the cities cannot pay the demand as made by the Rose Steering Committee even if the amount was correct. Therefore, the cities are forced to spend tens of thousands of dollars in a Kansas City Federal Court defending a lawsuit filed against them by the Rose Steering Committee. The cities have already spent \$39,748.45 and estimate the full cost of litigation could reach \$150,000.00.

Under Federal law, EPA can settle directly with the Mississippi cities and be dismissed from the lawsuit. The cities have made a proposal to EPA to allow the cities to settle directly with EPA, as permitted by law, and pay the proper share of the accurate clean-up costs in exchange for a release. The cities request any appropriate assistance that can be given them to encourage EPA to settle with the cities in conformity with State and Federal law.

April 12, 1990

Morris Kay, Regional Administrator
Environmental Protection Agency
726 Minnesota Ave.
Kansas City, KS 66101

Re: Settlement Officer of Cities of Canton, Clarksdale,
Kosciusko, and Yazoo City, Mississippi - Rose
Chemical Litigation

Dear Mr. Kay:

We, the undersigned Mayors of the respective cities, urge you to give serious consideration to the settlement offer contained in the accompanying letter addressed to you by our attorneys.

First, we are not the recalcitrants that some of the principals in this litigation would attempt to have you believe. Regardless of whether or not the constraints imposed upon the expenditure of public funds by Mississippi municipalities are antiquated, wise, or whatever, these constraints do exist and we as public officials must abide by them until they are changed. These constraints prohibited us from participating with the Rose Chemical Steering Committee in the manner in which that committee demanded.

Secondly, the documentation furnished to us to date does not indicate that the legitimate costs of the Rose Chemical clean-up will exceed that proportionate amount per pound of material as set forth in our settlement offer.

We, as public officials, support not only the enforcement of the congressional enactments such as CERCLA, but we also support the policy behind these enactments. We believe that we would be the very last of the contributors of materials to the Rose Chemical site who would seek to avoid responsibility in this matter. However, we simply cannot comply with those demands of the Rose Chemical Steering Committee which are beyond the requirements of CERCLA and are contrary to our own state statutes.


We urge you to accept our settlement offer in order that these small impoverished communities may avoid further expense.

Yours very truly,

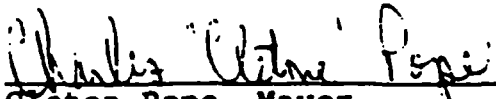
CITY OF CANTON, MISSISSIPPI

By 
Sidney Runnels, Mayor

CITY OF CLARKSDALE, MISSISSIPPI

By 
Henry Espy, Mayor

CITY OF KOSCIUSKO, MISSISSIPPI

By 
Cleton Pope, Mayor

CITY OF YAZOO CITY, MISSISSIPPI

By 
Hugh J. McGraw, Mayor

LAW OFFICES

SHOOK, HARDY & BACON

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OTHER OFFICES:
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OVERLAND PARK, KANSAS
19 BUCKINGHAM GATE
LONDON, ENGLAND

April 12, 1990

Morris Kay, Regional Administrator
Martha Steincamp, Regional Counsel
Region 7
Environmental Protection Agency
726 Minnesota Avenue
Kansas City, KS 66101

Re: Settlement Offer -- Rose Chemical Litigation

Dear Mr. Kay and Ms. Steincamp:

We represent three small Mississippi municipal defendants (City of Canton, City of Clarksdale and City of Kosciusko)¹ in the case styled Central Illinois Public Service Co., et al. v. Industrial Oil Tank & Line Cleaning Service, et al., currently in litigation in the Western District of Missouri ("Rose Chemical Litigation"). As you may know, this action involves a private party cost recovery action under 42 U.S.C. §§ 9607 and 9613(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), brought by members of the Steering Committee currently conducting a private party cleanup at the Martha Rose Chemical site in Holden, Missouri. Because this litigation is extraordinarily onerous as applied to these de minimis defendants, and because it appears that judicial relief will not be available without the expenditure of litigation expenses which will ultimately exceed the liability of these defendants under CERCLA, we are making a proposal to settle this matter directly with the Environmental Protection Agency ("EPA"). The terms of this offer are that these Mississippi defendants would pay \$1.29 per pound of polychlorinated biphenyls ("PCBs") sent by these defendants to the Rose site in return for a full release of liability, including contribution protection.

BACKGROUND

The Martha Rose Chemical site was operated from 1983 until approximately March 1, 1986, under authority granted to it by the EPA. The approval given the facility by EPA was to decon-

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1. The populations of the three municipal defendants are: Canton--11,116; Clarksdale--21,137; Kosciusko--7,415. Martindale-Hubbell Law Directory, Vol. IV (1989).

Mr. Kay and Ms. Steincamp
April 12, 1990
Page 2

taminate and process PCBs. Apparently, however, the facility never operated in compliance with the law. After several unsuccessful attempts by EPA to bring the facility into compliance with the Toxic Substances Control Act, 15 U.S.C. § 2601 et. seq., the site was essentially abandoned by its operators. Money which had been paid to the site's operators by legitimate customers from around the country for services never performed mysteriously disappeared. In July 1986, after the site had been abandoned, EPA revoked Rose's authority to decontaminate and process PCBs. Since 1986, several of the site's former operators have been convicted of, or pled guilty to, criminal violations of various federal laws, and the company has been involuntarily adjudged bankrupt.

After the abandonment of the facility by Rose, EPA notified certain major potentially responsible parties ("PRPs") of their status at the site. Plaintiffs in the Rose Chemical Litigation, and others, subsequently entered into an Administrative Order on Consent ("AOC 1") with EPA wherein they agreed to initiate a private party cleanup of the Rose site. At some point prior to the entry of AOC 1, on November 12, 1986, the Rose Steering Committee was formed, consisting essentially of the PRP signatories of AOC 1. The Steering Committee became the governing body overseeing the cleanup. The Mississippi municipal defendants were not notified of their status as PRPs at the site until after entry of AOC 1, nor were they given an opportunity to participate in any negotiations leading to entry of AOC 1. Subsequently, a second Administrative Order on Consent ("AOC 2") was entered into between plaintiffs and EPA, again without notice to these defendants.

Upon notification by the Steering Committee of their status as PRPs, these Mississippi defendants verified that they had, in fact, shipped very small amounts of PCBs to the Rose site in 1983, and they immediately acknowledged their potential liability for a fair share of response costs and supplied the Steering Committee with documentation of their shipments. When asked, each Mississippi defendant contributed its equitable share of costs incurred in the initial assessment of the site. Each Mississippi defendant made it clear to the Steering Committee their commitment to continue to contribute their equitable share of response costs, as required by CERCLA, and as permitted by Mississippi state law.

In April 1988, the Rose Steering Committee issued an ultimatum to all PRPs who had not entered into a formal settlement agreement. That ultimatum was that each PRP could pay the Steering Committee either \$1.53 per pound of pollutant sent to Rose and essentially be up-to-date as to its proportion of past costs expended at the site, or \$2.60 for each pound of material sent and "buy-out" its past and future liabilities. The ultimatum was not accompanied by any documentation whatsoever demonstrating that the clean-

Mr. Kay and Ms. Steincamp
April 12, 1990
Page 3

up was being performed in compliance with CERCLA, or that any of the costs were "necessary," or that they were in response to a release, or that they were consistent with the National Contingency Plan ("NCP"). At some point later, plaintiffs added 12 percent interest to their demands to "punish" what they termed "recalcitrants." They then upped the ante demanding payment of \$3.50 per each pound sent plus 12 percent interest, still without the documentation noted above. Plaintiffs refuse and have refused to discuss settlement on any other terms, and at a meeting on December 12, 1989, they suggested that the prices would likely go up at the next meeting of the Steering Committee.

A subsequent review by these defendants of cost documentation used by the Steering Committee to justify their ultimatums demonstrates that the Committee has dramatically inflated its costs and projected costs by including such esoteric cost items as "banquet fees," "newspaper subscriptions," "janitorial services," "furniture rentals for apartments," "apartment rentals," "trip home to Texas," "trip to Des Moines," "apartment phone bills," "auto rentals," "[numerous] luncheons," "ads run on Christmas Day," "[numerous other] ads in newspapers," "sponsor local high school poster," and on and on. In addition, the Committee has added in its past and future costs of litigation, including several million dollars in attorney's fees. As I am sure you well know, none of these costs are recoverable in a private party cost recovery action under 42 U.S.C. 9607 or 9613(f). See, U.S. v. Northeastern Pharmaceutical and Chemical Co., 810 F.2d 726 (8th Cir. 1986) cert. denied, 108 S. Ct. 146 (1987) [private parties must demonstrate affirmatively that their response costs are consistent with the NCP]; NL Industries v. Kaplan, 792 F.2d 896 (9th Cir. 1986) [private parties are only entitled to recover "necessary costs of response incurred" under CERCLA Section 9607(a)(4)(B)]; Dedham Water Co., et al. v. Cumberland Farms Dairy, Inc., et al., 1st Cir. No. 88-2080 (Nov. 2, 1989) [private parties are not entitled to recover legal costs and attorney's fees in a CERCLA cost recovery action.]

POSITION OF MISSISSIPPI DEFENDANTS

I. Mississippi State Law

At an early date (prior to the filing of the Complaint in the Rose Litigation), these defendants pointed out to the Steering Committee that under the Mississippi Constitution, Section 183, and several state statutes, they were precluded legally from settling with the Steering Committee in the form offered. We have based this conclusion in part upon several principles incorporated by state laws.

Mr. Kay and Ms. Steincamp
April 12, 1990
Page 4

First, is the long established doctrine, in non-Home Rule states, that municipal corporations have only those powers which are specifically delegated to them by the state legislature. See, Dillon, "Municipal Corporations," 5th ed., Sec. 239 (5th ed. 1911).

Second, at least in states having a constitutional provision analogous to Section 183 of the Mississippi Constitution,² local governments are precluded from spending public money other than for a public purpose. In re Validation of \$150,000 Hospital Revenue Bonds, 361 So.2d 44 (S. Ct. Miss. 1978).

Third, Mississippi has statutory provisions which regulate the municipal budget and specify the methods of raising revenue and set forth procedures governing the filing of claims with the municipality, the types of claims which can be approved for payment, when interest can and cannot be paid, etc. See, Mississippi Code 1972 Annotated, Chap. 39 Contracts and Claims, Chap. 35 Municipal Budget, Chap. 105 Depositories, and Sections 31-7-301, et. seq. on Public Works.

Fourth, in many states, including Mississippi, there are statutory provisions making it unlawful for any government employee or governing authority to appropriate or authorize expenditures without being in full compliance with state law and setting penalties for the willful and knowingly unlawful expenditures of public funds. Mississippi Code, 1972, § 31-7-55. There are also statutes which, in effect, abrogate sovereign immunity and make public officials personally liable for the full amount of an appropriation or expenditure for an object not authorized by law. Mississippi Code 1972, § 31-7-57.

In summary, these Mississippi defendants have been precluded by state law from settling with the Committee based on its undocumented, inflated ultimatums which are unrelated to defendants' potential exposure under CERCLA. The Committee has attempted to bludgeon these defendants into submission by forcing them to incur litigation costs defending a lawsuit that should not have have been brought.

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2. Ala. Consti. Art. IV, § 94; Cal. Consti. Art. XVI, § 6; Colo. Consti. Art. XI § 2; Del. Consti. Art. VIII, § 8; Fla. Consti. Art. VII, § 10; Ky. Consti. §§ 177, 179; La. Consti. Art. VII, § 14; N.J. Consti. Art. VIII, § III; N.Y. Consti. Art. VIII, § 1; N.M. Consti. Art. IX, § 14; Ohio Consti. Art. VIII, § 6; Pa. Consti. Art. IX, § 9; Wa. Consti. 8, § 7.

Mr. Kay and Ms. Steincamp
April 12, 1990
Page 5

II. Waste Allocation

Records previously provided to the Steering Committee document that these Mississippi defendants participated in a total of two loads of PCBs which were sent to Martha Rose in 1983. In November 1983, defendants City of Canton and City of Clarksdale shipped a load of PCBs (together with another municipality) to the Rose Chemical site. The documents show that Canton shipped a total of 24,435 pounds (despite this documentation, the Steering Committee erroneously credited Canton with 55,737 pounds), while Clarksdale shipped a total of 5,988 pounds. In a separate shipment, defendant Kosciusko shipped a total of 2,115 pounds to the Rose site. With the total waste at the site documented by the Steering Committee to be over 23 million pounds, these three Mississippi defendants together contributed less than .15 percent of the total waste at the site. This insignificant total contribution hardly justifies the extreme measures taken by the Steering Committee to extract blood from these defendants. In fact, an analysis of cost figures provided to us by the Steering Committee demonstrates that their tactics are designed to provide the Committee a nice profit. If the amounts demanded by the Committee were paid, the Committee, whose members contributed 60 percent of the PCBs sent to the Rose site, would end up paying approximately 30 to 35 percent of the estimated response costs.

III. EPA Policy--De Minimis Parties

Section 9622(g)(1) of CERCLA directs that "[EPA] shall as promptly as possible reach a final settlement with a [PRP] . . . if such settlement involves only a minor portion of the response costs at the facility." In developing guidance to implement that statutory mandate,³ and to expedite settlements with what were termed "de minimis parties," EPA defined that term to include parties who contributed a minimal amount of the waste at the site and whose waste was not significantly more toxic than other wastes at the site. EPA also stipulated that any settlement with a de minimis party must be "practicable and in the public interest." Federal courts reviewing settlements involving de minimis parties have upheld the reasonableness of a de minimis cut-off of less than one percent of a site's wastes. U.S. v. Cannons Engineering Corp., 720 F. Supp. 1027 (D. Mass. 1989). As was stated earlier, these Mississippi defendants contributed less than .15 percent of the waste at the Rose Chemical site. Additionally, there is no evidence whatsoever that waste contributed by these defendants was

3. See, "Interim Guidance on Settlements With De Minimis Waste Contributors Under Section 122(g) of SARA," 52 F.R. 24333 (June 30, 1987).

Mr. Kay and Ms. Steincamp
April 12, 1990
Page 6

any more toxic than other wastes at the site. There is also no conceivable argument that a settlement with these defendants would not be "practicable and in the public interest."

IV. EPA Policy -- Release of Liability

Sections 9622(f) and (g) of CERCLA provide that EPA may provide a de minimis party with a covenant not to sue in conjunction with a settlement if it is within the public interest to do so. Where this condition exists, EPA can provide such a covenant in return for payment of the PRPs' proportionate share of the cleanup plus a "premium" payment to cover potential cost overruns and future site remediation. In the Martha Rose situation, where it has been established that the Steering Committee is, in fact, making a profit off of the cleanup, these defendants submit that a "premium" payment is not warranted. These defendants further submit that all other criteria for a complete release, including contribution protection, are met. Based upon a review of cost documentation submitted by the Steering Committee, the defendants believe that \$1.29 per pound is a legitimate per pound cost at the Rose site.

We, therefore, respectfully submit that in return for payment of \$1.29 per pound of PCBs shipped to the Rose Chemical site by these Mississippi defendants, that EPA and these defendants enter into a settlement of all potential liability of these defendants (including contribution protection) at the Martha Rose Chemical site.

Sincerely,

SHOOK, HARDY & BACON

James O. Neet, Jr.
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105

David R. Hunt, Esq.
Ross, Hunt, Spell & Ross
P. O. Box 1196
Clarksdale, Mississippi 38814

JON:slb

cc: William K. Reilly, Administrator
U.S. Environmental Protection Agency
401 M Street S.W., Washington, D.C. 20460

10213247